



CLOSED CASE SUMMARY

ISSUED DATE: JULY 26, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0181

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	11.050 - Detainee Property 11.050 - Detainee Property	Not Sustained (Lawful and Proper)
# 3	8.200 – Using Force 2. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

An anonymous Complainant alleged that the Subject was arrested without probable cause and that officers negligently failed to recover the Subject's property. It was also determined that the Subject alleged that she was subjected to excessive force by the arresting officers.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation.

During its intake investigation, OPA noted that Named Employee #1 did not document in his report the Subject's allegation that she was the victim of a robbery. He further did not document her assertion that her property was taken from her and itemize the property. OPA determined that this issue was better handled by the chain of command and, as such, classified this allegation as a Supervisor Action.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

Officers, including Named Employee #1 (NE#1), responded to a fight that was occurring outside of a bar. The fight dispersed but a second fight then started. Once the second disturbance was quelled, a third fight, which involved some of the participants from the first fight, began. The combatants were throwing punches at each other and were



pinned against cars. Officers ordered them to stop but they did not. Officers used pepper spray on the group, and this caused the fight to cease. One of the participants in the fight was the Subject. She was placed under arrest by NE#1. The other primary participant, also a female, dispersed into the crowd and was not located by officers. As such, this woman was not arrested.

An anonymous Complainant later contacted OPA and claimed, among other allegations, that the Subject was arrested when she should not have been. The Complainant specifically criticized the officers' decision to arrest the Subject, but not the other woman.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

BWV clearly indicates that the Subject was involved in two separate physical altercations. She was not arrested after the first, as it broke up when the officers arrived. However, when officers tried to stop the second fight, she and another woman continued throwing punches. Based on what they observed, the officers had a sufficient evidentiary basis to arrest the Subject for assault. Moreover, that they did not arrest the other participant in the fight does not vitiate probable cause. Indeed, the other woman was only not arrested because she disappeared into the crowd.

As the Subject's arrest was lawful, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #2

11.050 - Detainee Property 11.050 - Detainee Property

At the time of her arrest, the Subject mentioned her property, which included a phone, wallet, and a purse, multiple times. She said that people were driving away with it. From a review of the BWV, there is no evidence indicating that NE#1 or any other officer observed the property fall from the Subject's person or saw it in possession of anyone else. While NE#1 had the Subject in custody, another officer did locate a wig belonging to the Subject and it was transported with her to the precinct.

BWV captured NE#1 asking other officers about the Subject's possessions. One officer told him that nothing was located. Another officer stated that the Subject also contended that her possessions were inside of a bar. Ultimately, NE#1 did not find the items that the Subject said were taken from her.

SPD Policy 11.050 governs detainee property. The policy generally requires that such property be safeguarded. However, the policy presupposes that, unlike here, the property is in the possession of the detainee at the time of the arrest. Ultimately, NE#1 is not responsible for safeguarding property that was not in possession of the Subject. NE#1 and other officers searched for the property and, when it was not located, they were not required to take further steps prior to transporting the Subject to the precinct.



While it is certainly unfortunate that the property was either stolen or lost, this does not compel a finding that NE#1 violated policy. To the contrary, OPA finds that NE#1 complied with policy during this incident and recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #3

8.200 – Using Force 2. Use of Force: When Authorized

During the chain of command review of this incident, it was determined that the Subject contended that she was “socked” by an officer during her arrest. The chain of command viewed this as a possible allegation of misconduct and referred this matter to OPA.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

OPA’s review of the BWV established that the Subject was not punched or otherwise struck by officers. As such, OPA deemed this portion of her claims unfounded.

With regard to the force that was used on the Subject, OPA determined that she was pepper sprayed by NE#1 and taken down to the ground. OPA concludes that both applications of force were consistent with policy.

At the time of the pepper spraying, the Subject was actively engaged in a physical altercation with another woman. She did not comply with multiple commands to stop, even after she was warned that she would be pepper sprayed. The use of pepper spray was appropriate to break up the fight and to prevent either individual, or the officers, from suffering further injury.

The takedown was also appropriate under the circumstances. The Subject was fleeing the officers and they were permitted to use force to prevent her from doing so and to take her into custody. The takedown did not appear to cause the Subject to suffer any injury and, once the Subject was on the ground, the officers modulated and then ceased their force.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**